

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE) MDL 1456
LITIGATION) No. 01-CV-12257-PBS
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) Judge Patti B. Saris
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THIS DOCUMENT RELATES TO:)
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)
State of Montana v. Abbot Labs, Inc., et al.,)
D. Mont. Case No. CV-02-09-H-DWM)
)

DEFENDANTS' JOINT MOTION
FOR LEAVE TO FILE UNDER SEAL

Defendants in the above action respectfully move for leave to file under seal the following materials: (1) Confidential Declaration of Kathleen M. O'Sullivan In Support of Defendants' Motion for Summary Judgment, dated February 8, 2007, with Exhibits; (2) Excerpts from the December 15, 2006 deposition of Montana's 30(b)(6) designee Jeff Buska; (3) Excerpts from the April 21, 2006 deposition of John Chappuis, Deputy Director, Montana DPHHS; (4) Excerpts from the August 23, 2006 deposition of Raymond S. Hartman, expert witness for the States of Montana and Nevada regarding damages; (5) Excerpts from the August 16, 2005 deposition of Geoffrey Kilgore; (6) Excerpts from the January 11, 2005 deposition of Patricia Kay Morgan, deponent on behalf of third-party publisher First DataBank; (7) Excerpts from the January 10, 2007 deposition of Rose Svitak, deponent on behalf of the Minnesota Multi-State Contracting Alliance for Pharmacy; (8) A true and accurate copy of MON0003034-3064, a September 23, 2002 contract between Express Scripts and Blue Cross Blue Shield of Montana; (9) A

true and accurate copy of MON0002995-3008, a February 1995 contract between Pharmacy Gold and Blue Cross Blue Shield of Montana; (10) A true and accurate copy of MON0006486-6500, a December 1999 contract between DPS and Blue Cross Blue Shield of Montana; and (11) A true and accurate copy of MON010469, a summary of drug savings achieved by AdvancePCS.

The foregoing materials include or reference documents and/or data that have been designated “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” pursuant to the terms of the December 13, 2004 Protective Order. Similarly, the deposition transcripts filed herewith have been designated either “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” pursuant to that same Order. Defendants accordingly request that these materials be filed under seal.

Paragraph 15 of the Protective Order mandates that any document or pleading containing material such as the material referenced above be filed under seal. Defendants hereby seek to comply with the terms of the Protective Order.

Pursuant to Local Rule 7.1(a)(2), on February 7, 2007 by electronic mail, counsel for Defendants conferred with Jenniphr Breckenridge, Counsel for the State of Montana, in a good faith effort to resolve or narrow the issues set forth herein. The State of Montana opposes the motion.

WHEREFORE, Defendants respectfully request that this Court grant leave to file the foregoing materials under seal.

**ON BEHALF OF ALL DEFENDANTS
IN THE MONTANA ACTIONS**

By: /s/ Thomas J. Sartory

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Dated: February 8, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2007, a true and correct copy of the foregoing document was served upon all counsel of record by electronic service pursuant to the District of Massachusetts's Electronic Case Filing System (CM/ECF).

/s/ Thomas J. Sartory

Thomas J. Sartory